No Redaction Needed

APPROVED

THE HIGH COURT

2018 No 12 MCA

IN THE MATTER OF THE FREEDOM OF INFORMATION ACT 2014

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 24 OF THE FREEDOM OF INFORMATION ACT 2014 AND ORDER 130 AND ORDER 84C OF THE RULES OF THE SUPERIOR COURTS

BETWEEN

UNIVERSITY COLLEGE CORK

APPELLANT

AND

THE INFORMATION COMMISSIONER

RESPONDENT

RAIDIÓ TEILIFÍS ÉIREANN

NOTICE PARTY

JUDGMENT of Mr Justice Garrett Simons delivered on 3 April 2019

INTRODUCTION

1. This matter comes before the High Court by way of a statutory appeal pursuant to section 24 of the Freedom of Information Act 2014 ("*FOI Act 2014*"). The underlying dispute between the parties can be shortly stated. The dispute centres on whether certain financial information contained in a finance contract (in effect, a loan agreement) between the European Investment Bank and University College Cork is exempt from disclosure on the basis that its disclosure could prejudice the competitive position of the University. The precise nature of the information is described under the next heading below. For present introductory purposes, it is sufficient to note that it relates to matters such as existing credit facilities between UCC and other financial institutions; the rate of

interest payable under the finance contract; and certain financial covenants to be observed by UCC as borrower.

2. The form of appeal stipulated under section 24 of the FOI Act 2014 is an appeal on a point of law. In order for an appeal to succeed, there must be a clear error of law established. It is not sufficient that this court might have reached a different decision on the merits. (See *F.P. v. Information Commissioner* [2019] IECA 19, [73]). Rather, it is necessary for UCC, as the appellant, to persuade this court that there has been an error of law on the part of the Information Commissioner.

3. For the reasons explained hereinafter, I am satisfied that the Information Commissioner's decision exhibits a number of errors of law, and that these errors are material. In particular, the impugned decision (i) mistakenly takes as its starting point a *presumption* in favour of disclosure which required UCC *to justify* the refusal of access, and (ii) misinterprets and/or misapplies the threshold for the "competitive prejudice" exemption under section 36(1)(b) of the FOI Act 2014.

THE RECORDS

4. In order to put the arguments of the parties into context, it may be useful to summarise, at this early stage of the judgment, the content of the records the subject of the request by RTÉ.

5. Section 25 of the FOI Act 2014 obliges the court to take all reasonable precautions to prevent the disclosure of information contained in an exempt record. Accordingly, the summary which follows will describe the content of the disputed parts of the records in general terms only. In reaching my conclusions in this case, I have, of course, had regard to the precise information contained in the records.

Record 1

6. Record 1 consists of what is described as a "finance contract" between the European Investment Bank ("*EIB*") and University College Cork ("*UCC*"). The finance contract is, in effect, a loan agreement. This finance contract was executed by the parties in July 2016. The credit facility authorised under the finance contract is one hundred million euros, and is to be provided in respect of a development project at UCC consisting of the construction of new infrastructure, the extension of existing academic buildings, the refurbishment of several existing but out-of-date university facilities, the upgrading of ICT infrastructure and the acquisition and refurbishment of two existing student residences.

7. The position adopted by UCC for the purposes of the statutory appeal to the High Court is that it has no objection to the disclosure of the finance contract in the redacted form which had been provided to the Information Commissioner by the EIB on 27 November 2017. This is so notwithstanding that the initial decision of UCC, and its decision on internal review, had been to withhold the document in its entirety.

8. The existence of this redacted version of the finance contract makes it possible to identify with precision the information which it is sought to exempt from disclosure. More specifically, the court has had the opportunity to carry out a "compare and contrast" exercise between the redacted version and the full version of the finance contract (which has been made available to the court but not, obviously, to the notice party). This exercise has allowed this court to pinpoint the information in dispute. Crucially, the Information Commissioner—in reaching the impugned decision—also had the benefit of both the redacted and non-redacted version of the finance contract. Notwithstanding this, the Information Commissioner failed to have proper regard to this material in reaching the impugned decision.

9. The form and the content of the finance contract are typical of what an Irish lawyer would expect to find in a commercial loan agreement. This is not surprising given that the governing law of the contract is English law, which is broadly similar to Irish commercial law in this regard. The finance contract addresses matters such as the amount of the loan; the rate of interest; payments; the borrower's undertakings and representations; security; charges and expenses; and events of default.

10. One of the striking features of this case is how little information it is sought to exempt from disclosure. The finance contract runs to in excess of fifty closely-typed pages, yet the redactions run to approximately twenty lines. The first item which is redacted is the "Final Availability Date". As appears from Article 1 of the finance contract, this date delimits the period during which disbursement requests can be made in respect of the loan tranches. Disclosure of this date would make known the effective period of the finance contract.

11. The next number of redactions (at pages 13 and 14 thereof) relate to the appraisal fee; the non-utilisation fee; and the rate of interest. These are all, self-evidently, commercially sensitive.

12. The next redaction relates to the disposal of assets by the borrower. Article 6 stipulates that UCC, as borrower, shall not dispose of all or any part of its business, undertaking or assets without the prior written consent of the EIB. This is subject to certain exemptions. The redaction relates to the conditions upon which UCC may dispose of assets for fair market value and at arm's length.

13. Article 6.11A stipulates certain financial covenants in respect of the "Annualised Service Cost" and other metrics. As explained by counsel for UCC at the hearing, these include financial covenants in respect of net indebtedness parameters.

14. Article 10 defines "Events of Default". The threshold applicable to defaults in respect of loans *other than* the loan the subject-matter of the finance contract has been redacted.

15. There are further redactions in relation to the "Form of Compliance Certificates" in Schedule C of the finance contract, but these simply replicate the provisions that have previously been specified in relation to financial covenants under Article 6.11A.

16. Finally, it should be noted that there are a number of additional redactions which relate to the position of third parties, i.e. parties other than UCC and the EIB. The Information Commissioner accepts that this third party information is exempt from disclosure under section 36(1)(b) of the FOI Act 2014. There is also a further set of redactions which relate to *personal information*, and the Information Commissioner accepts that this information is exempt under section 37 of the FOI Act 2014. There is no need, therefore, to refer to either of these "agreed" categories again in this judgment.

17. (For the avoidance of any doubt, I should make it clear that the entirety of the material in relation to these third parties is to be redacted, i.e. the redaction is not confined simply to the names of the third party companies but also to the details provided therein.)

Records 2 – 4

18. Records 2 – 4 are what might be described as internal documents created by UCC. Crucially, however, these records all relate to the (then) proposed finance contract with the EIB. The records set out details of existing borrowings and repayment levels, the commercial details on EIB borrowings, together with details of planned future forecast financial details for the term of the EIB borrowing, inclusive of all existing debt and planned future matching EIB debt. The records also include details of all income, including non-exchequer, expenditure, balance sheet and cash flow. This information is forecast to the year 2038, and includes details of interest repayments on borrowings.

19. Record 4 includes *inter alia* a summary of the borrower's undertakings and the financial covenants under the (then) proposed finance contract.

PROCEDURAL BACKGROUND

20. On or about 6 January 2017, RTÉ made a request to UCC for certain information pursuant to the FOI Act 2014 (as amended). As explained above, the records sought consist of a finance contract (in effect, a loan agreement) and certain internal documentation generated by UCC which summarises some of the financial details in respect of same.

21. The initial decision on RTÉ's request was made on 10 April 2017. The operative part of the decision reads as follows.

> "As you will see from the enclosed Schedule of Records, access to the records has been refused as they contain commercially sensitive material. This material has been exempted under section 36(1)(b) of the FOI Act, which states:
>
> > '36. – (1) subject to subsection (2), a head shall refuse to grant an FOI request if the record concern contains –
> >
> > ...
> >
> > (b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation'
>
> In my view, disclosure of this information would prejudice the competitive position of private third parties in the conduct of their business, would result in a material financial loss to those organisations and would decrease the likelihood of meaningful engagement by private firms willing to partner with the University. This would discourage such agencies/companies from working with UCC in the future which would, in turn, have a detrimental effect on the University's ability to fulfil its objects and to combine with external private bodies for that purpose.
>
> The FOI Act specifies that this exemption cannot be used if the public interest would, on balance, be better served by granting than by refusing to grant the request. I have considered that the public interest arguments in favour of release (the general right of access under the FOI legislation to records held by UCC

> and the transparency of the process) are outweighed by the arguments against release (namely, that the granting of access would result in the company involved been commercially disadvantaged by the disclosure). The University's ability to contract with external bodies is in many instances critical to fulfilling institution objectives in the public interest. Release of information relating to third parties which would be deemed commercially sensitive to those parties would restrict the University's ability to attract such parties to engage with or partner with the University in the future.
>
> I have therefore decided that the public interest in this instance is, on balance, better served by exemption of the records."

22. As appears, the decision cites both the commercial sensitivity of the third parties and the position of UCC itself.

23. RTÉ then applied for an internal review of this decision.

24. The decision on the internal review was notified to RTÉ by letter dated 27 April 2017.

> "Findings of the FOI Internal Review Board:
>
> Following consideration of the provisions of the FOI Act, the Board concluded that the records in question were commercially sensitive and that section 36(1)(b) had been applied correctly.
>
> The Board agreed with Mr Collins' assertion that disclosure of the records would prejudice the competitive position of private third parties in the conduct of their business, would result in a material financial loss to those companies and would decrease the likelihood of meaningful engagement by private firms willing to partner with the University. This in turn would have a negative impact on the University's ability to fulfil its institutional objectives and attract external bodies for that purpose. This, in the view of the Board, would not be in the public interest. The Board concluded the (*sic*) that the public interest would be better served by the exemption of the records in question.
>
> Conclusion
>
> I have decided to accept the recommendation of the FOI Internal Review Board and therefore to uphold the original decision made on your request."

25. This decision is signed by the President of UCC.

26. RTÉ exercised its right of review to the Information Commissioner pursuant to section 22 of the FOI Act 2014. The application for review is dated 5 June 2017. Three principal arguments were made in support of the review, as follows. First, it was submitted that no third party consultation had been undertaken to assess the EIB's position in relation

to the records. Secondly, it was suggested that the EIB is not a typical third party. Rather, it was suggested that the EIB is a public body which operates in accordance with the Transparency Directive and its own transparency policy. A number of passages from the transparency policy were then set out. Thirdly, it was submitted that EIB loans are not commercial loans in the strict sense, and that the EIB is not in competition with retail banks.

27. There was a fourth point which related to the—mistaken—understanding of RTÉ that records 2, 3 and 4 concerned UCC's own governance systems and management of the loan. In fact, unbeknownst to RTÉ at the time, the internal documentation from UCC, in effect, merely summarised the main features of the finance contract (loan agreement).

28. The Investigator appointed by the Information Commissioner wrote to UCC on 15 August 2017. The operative part of this letter requested submissions, in particular, on the following issues.

> "I wish to explain that the key questions or issues identified below are merely those that I, as the Investigator, regard as particularly relevant based on my initial examination of the case file. They are not necessarily the only relevant issues to be addressed in this case. Moreover, any views that I may form on the matter are not binding on the Commissioner. Therefore, you should include in your submissions any other information that you consider may be relevant to the Commissioner's review (including any documentary evidence that may support your position).
>
> Claim for exemption
>
> UCC has refused access to the records concerned under section 36(1)(b) of the FOI Act. Although not specifically identified, it appears that UCC is of the view that the EIB's interests would be adversely affected by the release of the information concerned. It is my understanding that the EIB is a non-profit public institution, which is not in competition with retail banks or lending institutions. Bearing this [in] mind, please ensure that you provide all information relevant to your claim for exemption for each of the records concerned. You should also have regard to the following key questions that are required, at a minimum, to be addressed:
>
> - Has UCC asked the EIB if it consents to the release of the information concerned? (Section 36(2) of the FOI Act refers). If yes, please give

details of its response. If no, please provide the relevant contact details for the EIB.

- Please identify the relevant information (financial, commercial or other) contained in the records concerned; identify the material financial loss or gain which is expected to result to the EIB and show how disclosure of the relevant information in the record could reasonably be expected to cause that result; and/or

- Please describe how the competitive position of the EIB could be prejudiced by the disclosure of the relevant information.

- Please provide details of the public interest factors in favour of release of the record and the public interest factors against its release which you considered in this case, and explain why you concluded that, on balance, the public interest would not be better served by granting this request. I would ask you to have regard to the applicant's argument in this regard.

Conclusion

As indicated above, you should consider this invitation to make submissions to be the final opportunity to justify the decision taken in this case. This Office will have regard to any submissions received before making a binding decision on the matter. As outlined above, if no substantive response is received by 29 August 2017, it will be assumed that you have no submissions to make and the Commissioner may proceed to a decision without further reference to your organisation. In the meantime, if you have any queries in relation to this case, please do not hesitate to contact me [contact details redacted]."

29. It appears from the affidavit filed on behalf of UCC grounding the statutory appeal to the High Court that there was a subsequent exchange of emails between UCC and the EIB. Relevantly, by email dated 28 August 2017, the EIB stated *inter alia* that given that the financial contract between the EIB and UCC is commercially sensitive information, the EIB would agree with UCC's position and would prefer not to consent to the release of this financial contract. It was further stated that the EIB is a supranational bank and that its transparency policy is on its website. The email then contained a hyperlink to the PDF copy of the EIB transparency policy and a link to its website.

30. The deadline for the making of submissions to the Information Commissioner was extended to 8 September 2017. UCC made its substantive response under cover of a letter dated 7 September 2017. The letter contains a number of general arguments in

relation to extraneous matters: for example, it was alleged that no relevant records existed as there is no "loan contract" in being. There was also reference to the fact that the contract shall be governed by English law.

31. In terms of the specific questions raised by the Investigator, the response was as follows.

> "Please find below UCC's response to the specific questions posed in your email of 15th August:
>
> - Has UCC asked the EIB if it consents to the release of the information concerned? (section 36(2) of the FOI Act refers). If yes, please give details of its response. If no, please provide the relevant contact details for the EIB.
>
> UCC's bursar/Chief Financial Officer contacted [name redacted], Loan Officer, EIB on 16th August 2017 regarding this matter. She responded on 28th August 2017 as follows:
>
> 'Given that the financial contract between the EIB and UCC is commercially sensitive information, we agree with your position and we would prefer not to consent to the release of this financial agreement. Further, the EIB is a supranational bank and our transparency policy is on our website. For ease of reference, I attach a link to the PDF copy of the EIB transparency policy and a link to our website:
>
> [...]
>
> In particular, I refer to Article 5.5:
>
> 5.5 Access to Information/Documents shall also be refused where disclosure would undermine the protection of:
>
> — commercial interests of a natural or legal person'.
>
> In UCC's view, release of such commercially sensitive information would considerably compromise EIB in its negotiations with other Universities in Ireland and across Europe and negatively impact UCC and Ireland in any future dealings with them for future financing support.
>
> EIB is not a public organisation, but as they describe, a supranational bank which operates in a commercial environment and regularly competes with other providers of Finance including commercial banks and providers of placement funding. Ultimately they remain a bank, albeit owned by the member states, and charge commercial competitive terms. UCC's relationship with the EIB could be seriously damaged by divulging such commercial third party details. Disclosure of the information would compromise the University's ability to attract the EIB

and other such institutions to engage with the University in the future. This, in our view, is contrary to the public interest.

- *Please identify the relevant information (financial, commercial or other) contained in the records concerned; identify the material financial loss or gain which is expected to result to the EIB and show how disclosure of the relevant information in the record could reasonably be expected to cause that result*;

  Disclosure of UCC's cost of capital will compromise UCC in the future were it to enter into lease agreements of its assets, Public Private Partnerships or when setting fees. Such disclosure would compromise UCC in its negotiations with other financing providers and also disclose commercially sensitive information on UCC's cost of capital for a range of projects which do not received (*sic*) any public funding.

- *Please describe how the competitive position of the EIB could be prejudiced by the disclosure of the relevant information.*

  Disclosure of EIB's margin applied to the UCC facility, would compromise EIB's competitive position when competing for future loans with other potential customers. It would not be in the public interest of UCC or its students were such future investment compromised by the disclosure requested.

- *Please provide details of the public interest factors in favour of release of the record and the public interest factors against its release which you considered in this case, and explain why you concluded that, on balance, the public interest would not be better served by granting the request. I would ask you to have regard to the applicant's arguments in this regard.*

  All Universities operate in a competitive environment for Research funding, international students and for certain HEA funding. Whilst UCC always endeavours to be transparent in all activities, given that it is competing with private Higher Education providers in Ireland e.g. Hibernia for On Line Students and with international universities — many of which are private, for overseas students, such disclosure as requested would compromise UCC's competitive position, none of which is in the public interest and would be commercially damaging to UCC. Whilst University considered the transparency of its dealings with the EIB as a public interest factor in favour of release, this was greatly outweighed by the public interest factors against release as outlined above.

It was never intended that the FOI legislation would be used in such a way as to be a means to support the commercial interest of privately owned media companies, many of whom themselves provide educational services."

32. It appears from the affidavit of the Senior Investigator filed in opposition to the appeal that the EIB responded to the Information Commissioner as follows on 27 November 2017.

> "We refer to your correspondence of 6 November 2017 addressed to the Corporate and Banking Division of the European Investment Bank (EIB), regarding a review carried out by the Information Commissioner under the Freedom of Information (FOI) Act 2014 of a decision of University College Cork (UCC) in relation to an FOI request dated 6 January 2017 seeking access to records relating to a loan agreement between UCC and the EIB.
>
> First we would like to thank you for giving us the possibility to provide you with our position regarding the release of the records at issue.
>
> We have assessed the review concerning the refusal to disclose the finance contract between UCC and the EIB on the basis of provisions of the EIB Transparency Policy (EIB TP).
>
> After having consulted with UCC, we have come to the conclusion that we do not object to the release of the attached redacted version of the finance contract between UCC and EIB.
>
> Information redacted from this document and replaced with the symbol '[...]' concerns names of individuals as well as financial information which if disclosed would undermine the protection of, respectively:
>
> – Privacy and the integrity of the individuals, in particular in accordance with EU legislation (article 5.4.b of the EIB TP);
>
> – Commercial interests of a natural or legal person (article 5.5. of the EIB TP).
>
> None of the information removed from this document relates to emissions into the environment."

THE IMPUGNED DECISION

33. As explained in the affidavit of Elizabeth Dolan sworn on behalf of the Information Commissioner on 21 March 2018, the Commissioner had delegated the authority to conduct the review and reach a decision thereon to Ms Dolan. Ms Dolan is a Senior Investigator at the Office of the Information Commissioner. Express provision is made for such delegation under Schedule 2 of the FOI Act 2014. In circumstances where Ms Dolan was acting as delegate, I propose to adopt the same approach as she has in her affidavit, i.e. to refer to the decision as one made by the Information Commissioner.

34. The decision of the Information Commissioner was the subject of detailed submissions by counsel on all sides. For ease of exposition, I propose simply to set out below the key or operative parts of the decision as identified by counsel. It would lengthen this judgment unnecessarily were I to set out the impugned decision in full. In preparing this judgment, I have, of course, had regard to the *entirety* of the decision.

35. The key passages of the decision are as follows.

> "I wish to draw attention at the outset to section 22(12)(b) of the FOI Act which provides that a decision to refuse to grant a request shall be presumed not to have been justified unless the body concerned shows to the satisfaction of the Commissioner that its decision was justified. This means that the onus is on UCC to satisfy this Office that its decision to refuse access to the information sought was justified.
>
> [...]
>
> I note that on its own website, the EIB describes itself as 'a non-profit, policy driven public bank....[which] is financially autonomous'. I also note that it raises its resources on the financial and capital markets, mainly through bond issues. In my view, the EIB is very different from a commercial bank. Furthermore, as stated on the EIB website, it 'can only make a specific quote for lending following a thorough appraisal of the project. Loan rates will also vary according to specific aspects such as currencies borrowed, amount, duration and timing of disbursement'. Clearly, each project is assessed on its merits in terms of risk, collateral and term of loan, etc. The website also states that the EIB offers fixed interest rates as well as revisable and convertible rates, which 'allow for a change of interest rate formula during the life of the loan at predetermined dates or during predefined periods'. It does not appear to me that the EIB is purporting to offer a standard interest rate to all customers, meaning

that it could lose business to another bank if a customer discovered it was on less advantageous terms than UCC. More importantly, the EIB itself has not argued that this is the case.

As noted above, when asked to comment on the possible release of the contract, the EIB provided a copy of the record with various references to interest rates and terms and conditions removed, and said it had no objection to its release. In this regard, it referred to Article 5.5 of its own Transparency Policy which states that '[A]ccess to information/documents shall also be refused where disclosure would undermine the protection of... commercial interests of a natural or legal person'. I note that Ms Murdiff had informed the EIB of her view that UCC had 'only made general submissions in support of its decision' and that it seemed to her that it had not justified its claim that section 36(1(b) applied to the records cat issue. *While the information withheld from the copy of the record provided by the EIB indicated which information it considered to be commercially sensitive, it did not state why it believed this to be the case.** Neither has it indicated whether it was its own or UCC's interests which it expected to be harmed by release, or what harm it envisaged.

UCC stated in its submission that the specific interest rates to be applied to each drawdown of funds and whether the rates were to be fixed or floating were not set until the relevant drawdown dates. Therefore, I am not satisfied that release of the overall terms of the contract would reveal the specific terms applied to each tranche of funds drawn down by UCC. Furthermore, while the EIB was given the opportunity to support UCC's case by explaining why the information concerned should be exempt and identifying the harm which could be occasioned by its release, it has not done so. In my view, there is nothing before me to demonstrate how the EIB's competitive position would be prejudiced or how it could incur a material loss by release of the information concerned.

However, I note that Record 1 also contains references to third party companies (not UCC or EIB). As I understand it, these companies do not have any role in the loan between UCC and EIB. I accept that release of the information relating to these companies could reasonably be expected to result in a material financial loss to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation. *Accordingly, while I find that UCC has not met the burden of proof to show that it was justified in refusing access to the majority of Record 1 under section 36(1)(b),** I find that section 36(1)(b) applies to the information relating to these companies.

Much of the information in Records 2-4 does not relate to the EIB in anything but the broadest terms. Records 2 and 3 contain details of UCC's holdings, loans, projected income and expenditure and cashflow and Record 4 is a summary of the loan agreement. I note that much of Record 4's content appears to have been put in the public domain by UCC when its plans were announced.

This Office has accepted previously that the FOI Act does not prohibit a public body from relying upon the provisions of section 36(1)(b) in circumstances where it is claiming that the disclosure of the records at issue could reasonably be expected to result in it incurring a material financial loss. However, it is

noteworthy that UCC has not pointed to any specific information contained in the records at issue that, if disclosed, could reasonably be expected to give rise to such harm. Rather, it made a general assertion that the disclosure of UCC's cost of capital would compromise it if it were to enter into lease agreements of its assets, Public Private Partnerships or when setting fees. In previous decisions, this Office has explained its approach to interpreting the words 'could...reasonably be expected to....' in the context of section 36 of the FOI Act. In determining whether access 'could reasonably be expected to affect adversely' one of the interests outlined in section 36(1), this Office takes the view that there must be adequate grounds for any such expectation at the time the decision to refuse access is made. The mere possibility of some adverse effect is not sufficient.

In this case, while I accept that UCC has outlined a potential harm arising from the release generally of records of the type at issue here, it has not explained how such harm might arise having regard to the contents of the specific records at issue. As such, it seems to me that UCC has not shown that section 36(1)(b) applies to Records 2-4."

[...]

Decision

Having carried out a review under section 22(2) of the Freedom of Information Act 2014, I hereby vary UCC's decision. *I find that it was not justified in its decision to refuse access to the records sought under section 36(1)(b).** I find that it was justified in withholding some of the information in the records at issue on the basis of section 37(1) of the Act. I direct the release of Records 1-4 as outlined above."

*Emphasis (italics) added.

NATURE OF STATUTORY APPEAL

36. This matter comes before the High Court by way of a statutory appeal pursuant to section 42 of the FOI Act 2014. The nature of the High Court's jurisdiction on such an appeal has been considered in two very recent judgments of the Court of Appeal.

37. In *F.P. v. Information Commissioner* [2019] IECA 19, the Court of Appeal stated as follows at [73].

> "I find no error of law on the part of the trial judge in his conclusions in this regard, and therefore neither on the part of the Commissioner. This is a limited form of appeal under s. 42 of the Act, being confined to a point of law. The Court has been referred to the relevant authorities in relation to the circumstances in which the court hearing an appeal on a point of law may

> intervene. These authorities are set forth above, which I respectfully adopt. It is clear from these that considerable deference will be afforded to an expert decision-maker such as the Commissioner, that a wide margin of appreciation will be afforded to him, being the person who has, by the Act, been charged with the making of decisions in relation to requests under s. 7 of the Act. It is not sufficient, even were it to be the case, that in the exercise of the same discretion the court hearing an appeal might itself have reached a different decision. There must be a clear error of law established."

38. More recently, in *Minister for Communications Energy and Natural Resources v. Information Commissioner* [2019] IECA 68 ("*ENET*"), the Court of Appeal emphasised the distinction between a statutory appeal and the narrower jurisdiction which the court exercises in judicial review proceedings. Giving the judgment of the court, Birmingham P. endorsed the proposition stated by the Supreme Court in *Sheedy v. Information Commissioner* [2005] 2 I.R. 272 to the effect that it would be incorrect to apply exclusively judicial review principles to matters of statutory interpretation in the way that might be appropriate to issues of fact. A legal interpretation of a statute is either correct or incorrect.

39. Counsel on behalf of UCC also helpfully referred me to the judgment of the Supreme Court in *Fitzgibbon v. Law Society* [2014] IESC 48; [2015] 1 I.R. 516. Whereas this judgment is not directly concerned with an appeal under the FOI Act 2014, the Supreme Court *per* Clarke J. (as he then was) does provide general guidance as to the nature and extent of statutory appeals. Counsel drew my attention in particular to the discussion at paragraph [128] as follows.

> "In one sense it may be said that two types of points of law can legitimately be raised in an appeal which is limited to points of law alone. First, there may be an error of law in the determination of the first instance body. *Second, it may be the case that the way in which the first instance body has reached its conclusions on the facts involves an error which itself amounts to an error in law.** There may have been no evidence to support a finding or inferences may have been drawn on the facts which no reasonable decisionmaker could have drawn. It follows that a higher degree of deference, so far as the facts are concerned, is paid by the appellate body to the decision of the first instance body in an appeal on a point of law only, as opposed to an appeal against error. In the

latter case the court is entitled to form its own view on the proper inferences to be drawn (although not on primary facts)."

*Emphasis (italics) added.

40. As discussed presently, I have concluded that the Information Commissioner made an error of statutory interpretation. More specifically, the Information Commissioner erred in interpreting and applying the test under section 36(1)(b) of the Freedom of Information Act 2014. The conclusion stated in the impugned decision to the effect that UCC would not be harmed by the disclosure of the disputed records is unsustainable.

POSITION ADOPTED BY UCC IN RESPECT OF THE REDACTED DOCUMENTS

41. For the sake of completeness, I should address briefly the change in UCC's position in respect of the redacted documents. As appears from the procedural history set out earlier, the approach adopted by UCC in both its initial decision and its internal review was that the *entirety* of the documents should be exempted from disclosure. The position now adopted in the appeal before this court is that the records should be released in redacted form.

42. It will be recalled that the redacted version of the finance contract was only produced by the EIB for the first time *after* UCC had made its formal submission on the review before the Information Commissioner. As of the date of its formal submission, UCC appears to have been resisting disclosure of the documents in their entirety.

43. This change in position was the subject of adverse comment by counsel on behalf of the Information Commissioner and on behalf of RTÉ. In response, counsel for UCC says that it is clear from a reading of the submission made by the EIB on 27 November 2017 that the approach of redacting the finance contract was one agreed with—and implicitly endorsed—by UCC. Counsel also relies on the judgment of the Supreme Court in *Kelly v. Information Commissioner* [2017] IESC 64; [2017] 3 I.R. 381, [69] as authority

for the proposition that the Information Commissioner is required to determine the review on the entirety of the information before him.

> "I have no doubt but that the type of finality envisaged by this provision can only be arrived at where the decision under review, relative to the grounds of appeal advanced, has been fully explored, whether such involves issues of fact, of law, or other matters, as the case may be. A decision of that kind, which must include a consideration of all relevant points, could not otherwise be validly reached or legally sustained. Although this process of adjudication has been described by the High Court at para. 95, p. 29, perhaps quite understandably, as 'following the completion of a full process of review', I am somewhat reluctant to badge that exercise as such, for fear of ambiguity – this for reasons which will become apparent in a moment. Instead, I would prefer to say 'following such a review process as is legally required prior to the making of a substantive merit-based decision under s. 34(2) of the 1997 Act'."

44. These arguments on behalf of UCC are well made. The Information Commissioner was required to consider all of the material before him. This included the redacted version of the finance contract. As explained under the next heading below, access to this document would have allowed the Information Commissioner to identify with precision the information which it was sought to exempt from disclosure. The Information Commissioner, having expressly sought the views of the EIB, was obliged to have regard to those views in reaching a final decision. The fact that UCC had adopted the position in its written submission of 7 September 2017 that the records should be exempted in their entirety did not affect this obligation.

DISCUSSION

SECTION 22(12) / PRESUMPTION

45. Section 22(12)(b) of the FOI Act 2014 provides as follows.

> "(12) In a review under this section—
>
> [...]
>
> (b) a decision to refuse to grant an FOI request shall be presumed not to have been justified unless the head concerned shows to the satisfaction of the Commissioner that the decision was justified."

46. Towards the start of the impugned decision, the Information Commissioner stated as follows under the heading "Preliminary Matters".

> "I wish to draw attention at the outset to section 22(12)(b) of the FOI Act which provides that a decision to refuse to grant a request shall be presumed not to have been justified unless the body concerned shows to the satisfaction of the Commissioner that its decision was justified. This means that the onus is on UCC to satisfy this Office that its decision to refuse access to the information sought was justified."

47. This sentiment is reflected in the operative part of the decision where it is stated at page 5 thereof that UCC has not met "the burden of proof to show that it was justified in refusing access" to the majority of record 1, and, at page 8, that UCC was "not justified in its decision to refuse access to the records sought under section 36(1)(b)".

48. UCC submits that the Information Commissioner erred in the interpretation of the legislation by purporting to apply the presumption under section 22(12)(b). In this regard, leading counsel on behalf of UCC, Mr Cian Ferriter, SC, relied on the judgment of Macken J. in the *Rotunda Hospital* case (*Governors and Guardians of the Hospital for the Relief of Poor Lying-In Women v. Information Commissioner* [2011] IESC 26; [2013] 1 I.R. 1). The *Rotunda Hospital* case was decided by reference to the previous version of the legislation, namely, the Freedom of Information Act 1997. Section 34(12)(b) of the 1997 Act was in broadly similar terms to section 22(12)(b) of the 2014 Act (set out above).

49. Macken J. expressed the view that this presumption did not apply to mandatory exemptions. See paragraphs [258] and [259] of her judgment as follows.

> "A separate argument of a more general nature is made by the respondent that she was entitled, in considering the application of s. 26(3), to have regard to the provisions of s. 34(12)(b) of the Act. It provides:-
>
> > '[A] decision to refuse to grant a request under section 7 shall be presumed not to have been justified unless the head concerned shows to the satisfaction of the Commissioner that the decision was justified.'

> This is a very clear statement which, on its face, appears to apply to all decisions. I have no difficulty in its application to all circumstances covered by the right of access in s. 6(1). I have a significant difficulty in its application to requests made in respect of information exempt from disclosure under Part III of the Act, which by statute mandates a refusal, and to which no right of access exists. It is difficult to see how it would apply to the provisions of ss. 19 to 32, other than the head in question meeting the terms of the various sections. Even then it is difficult to see how a head goes about 'justifying' a decision in the case of, say, s. 19(1)(a), which exempts from disclosure, inter alia, a record which has been or is proposed to be submitted to the Government for its consideration, which I take as the first example of the type of record covered. Either s. 34(12) does not apply to such exempt records, or it is sufficiently satisfied by proof that the record in question is, in fact, one submitted to or is proposed to be submitted to the Government. Such proof would likely suffice if it is made by an appropriate person, and could not be rejected by the respondent, save in the most exceptional circumstances, of which I can imagine none. If therefore s. 34(12) of the Act does apply, and I do not accept the respondent has established that it does, to Part III records, then compliance with the terms of s. 26(1)(a) also appears sufficient to justify the decision made. In the present case I am satisfied that that legal requirement was complied with by the submissions made on the part of the appellant responding to the criteria mentioned in the section itself, and from the terms of its original refusal. As I have mentioned previously in this judgment, neither the respondent nor the High Court Judge suggested that the opinion criteria mentioned in s. 26(1)(a) were not met."

50. As appears, the rationale of this judgment is that once a record comes within a mandatory exemption, then there is no additional requirement *to justify* the decision to refuse disclosure. On the facts of the present case, counsel for UCC submitted that this rationale applies equally to a record which falls within the exemption under section 36(1)(b).

51. In response, counsel on behalf of the Information Commissioner, Mr Francis Kieran, BL, made an attractive argument to the effect that the passages from Macken J.'s judgment were *obiter dicta*, and submitted that this court should prefer instead the approach adopted by the High Court (Noonan J.) in *Minister for Communications Energy and Natural Resources v. Information Commissioner* [2017] IEHC 222. Mr Kieran also relies on McDonagh, *Freedom of Information Law* (3rd ed., Round Hall, 2015), pages 207 and 208. McDonagh suggests, by reference to the Explanatory Memorandum of the Freedom of Information Bill 2013, that what is now 11(7) of the FOI Act 2014 makes it

clear that the Oireachtas supports a restrictive approach to the interpretation of the exemption provisions.

52. Section 11(7) provides as follows.

> "(7) Nothing in this section shall be construed as applying the right of access to an exempt record—
>
> (a) where the exemption is mandatory, or
>
> (b) where the exemption operates by virtue of the exercise of a discretion that requires the weighing of the public interest, if the factors in favour of refusal outweigh those in favour of release."

53. Mr Kieran's skilful submissions have, however, been overtaken by events. More specifically, subsequent to the conclusion of the hearing before me on 14 February 2019, the Court of Appeal delivered its judgment in *Minister for Communications Energy and Natural Resources v. Information Commissioner* [2019] IECA 68 ("*ENET*"). The parties, very properly, brought this judgment to my attention in order that I could have regard to same in adjudicating upon the within proceedings. The parties all filed short supplemental submissions on the judgment, and these were elaborated upon at a brief hearing on the morning of 26 March 2019.

54. Counsel on behalf of the Information Commissioner sought to distinguish the Court of Appeal judgment on the basis that, on the facts of the case, it had been *conceded* that the record at issue would prejudice the competitive position of the third party, ENET, and thus came within the exemption under section 36(1)(b). The dispute centred instead on whether the public interest test under section 36(3) was met.

55. It was suggested, separately, that section 22(1)(b) had to be interpreted by reference to section 22(1)(a), and that it was not apparent that this had been considered by the Court of Appeal. (See paragraph 47 of the Information Commissioner's supplemental written submissions of 22 March 2019).

56. With respect, I cannot accept either of these arguments. The judgment of the Court of Appeal in *ENET* is clear in its terms. Neither the Court of Appeal's analysis, nor that of Macken J. in *Rotunda Hospital*, is confined to a consideration of the public interest test. The argument re: section 22(1)(a) forms no part of the Court of Appeal's judgment and does not appear to have been argued in that case.

57. It was suggested in the Information Commissioner's written legal submissions that UCC's approach would reduce the Commissioner's role to a rubber-stamping exercise.

> "23. Indeed, on UCC's proposed approach, the review by the OIC of a public body's decision to refuse an FOI request could be reduced to a rubber-stamping exercise wherein the OIC would be obliged to accept that an exemption applies simply because a public body asserts (without more) that it does. This would lead to an absurdity, and one which is squarely contrary to the objectives of the Act as identified in the Long Title and the raison d'etre for the review mechanism established by the Oireachtas in the Office of the Information Commissioner."

58. With respect, I think that this submission overstates the position. The essence of the *Rotunda Hospital* case, now confirmed by the Court of Appeal in *ENET*, is that where a record comes within the terms of one of the statutory exemptions, then no additional justification for non-disclosure is required to be demonstrated. (This is subject to the separate statutory consideration of the public interest).

59. The judgment of the Court of Appeal is especially relevant to the present case in that it considers not only the presumption under section 22(12)(b), but also the same exemption as is relied upon in the present case, namely the exemption for commercially sensitive information under section 36 of the FOI Act 2014. The Court of Appeal judgment concerned a request for access to a "concession agreement" which the Minister had entered into with a third party in respect of the management of certain infrastructure for the provision of broadband communication. The Information Commissioner had concluded that the second limb of the test under section 36(1)(b) did apply in circumstances where the concessionaire's competitive position would be prejudiced by

disclosure, but concluded by reference to section 36(3) that the public interest would, on balance, be better served by granting than by refusing to grant the FOI request.

60. Birmingham P., giving the judgment of the Court of Appeal, stated that the comments of Macken J. in *Rotunda Hospital* were "significant, considerate, and deliberate", and not to be dismissed as mere *obiter*. Birmingham P. went on to say that he was in agreement with the comments of Macken J., and concluded that the Information Commissioner had approached his task on an incorrect legal basis. Given the fact that the Commissioner had referred to his understanding of the presumption in correspondence with the Minister, and referred to his understanding of the presumption in the text of his decision, the President stated that he could not regard this error as anything other than significant.

61. Applying the principles identified by the Court of Appeal to the facts of the present case, I have concluded that the impugned decision exhibits a similar error. Not only does the impugned decision expressly state that the onus was upon UCC to satisfy the Information Commissioner that its decision to refuse access to the information sought was justified, the subsequent approach to the interpretation and application of the "commercially sensitive" exemption under section 36(1)(b) indicates that too high a threshold was being imposed. Notwithstanding that the nature of the redacted information was self-evidently commercially sensitive, the Information Commissioner appears to have expected UCC to demonstrate some *additional justification* for non-disclosure. This is addressed in detail under the next heading below.

SECTION 36(1) / COMMERCIALLY SENSITIVE INFORMATION

62. Section 36(1) of the Freedom of Information Act 2014 provides as follows.

> "36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—
>
> (a) trade secrets of a person other than the requester concerned,

(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or

(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates."

63. This is subject to the public interest test under section 36(3) as follows.

> "(3) Subject to section 38, subsection (1) does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the FOI request."

64. As appears, there are two limbs to the test under section 36(1)(b). The first limb refers to information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates. The second limb refers to information whose disclosure could prejudice the competitive position of the person to whom the information relates in his or her profession or business or otherwise in his or her occupation.

65. Crucially, the threshold applicable to each limb is different. The threshold applicable to the second limb ("*could prejudice*") is one of the lowest standards prescribed under the FOI Act 2014. The nature of the threshold under the equivalent provision of the Freedom of Information Act 1997 was considered briefly by the High Court (Cross J.) in *Westwood Club v. Information Commissioner* [2014] IEHC 375; [2015] 1 I.R. 489. On the facts, the Information Commissioner in his decision in that case had characterised the standard of proof as being "very low". Cross J. stated that the use of the term "very low" did not constitute an error of law, and went on to suggest that in layman terms it fairly describes the nature of what must be proved.

66. The language under section 36(1)(b) is to be contrasted with that under section 40(2)(n). Section 40 allows for the refusal of access on grounds related to the "financial and economic interests of the State". The section applies *inter alia* to

> "(n) information the disclosure of which could reasonably be expected to affect adversely the competitive position of a public body in relation to activities carried on by it on a commercial basis".

67. The contrast in language between section 36(1)(b) and section 40(2)(n) indicates that the threshold to be met under the former is a lesser one, and does not have to reach the "reasonably be expected" standard.

68. Notwithstanding the fact that the decision under appeal correctly identifies at the outset that the standard of proof necessary to meet the second limb under section 36(1)(b) is considerably lower, the Information Commissioner fails to advert to this distinction in the operative part of the decision.

69. Given the submissions which had been made by UCC and the EIB, the Information Commissioner was required to consider the objection based on commercial sensitivity from the perspective of each body. In the event, however, the decision under appeal focuses almost exclusively on the question of whether there would be any harm to the EIB. There is very little reference to the perspective of UCC. Such reference as is made to UCC is confined—erroneously—to the first of the two limbs of section 36(1)(b). Thus, for example, it is stated that UCC has not pointed to any specific information contained in the records at issue which, if disclosed, could *reasonably be expected* to give rise to material financial loss.

70. This approach exhibits a number of errors of law as follows. First, an error of statutory interpretation. On its correct interpretation, the two limbs of section 36(1)(b) are disjunctive. It is sufficient to exempt information from disclosure that it fulfils either one

of the two limbs. The approach taken by the Information Commissioner fails to recognise this, and focuses almost exclusively on the first limb.

71. Secondly, the approach involves a failure to have regard to relevant considerations. During the course of the appeal process, the EIB had furnished a version of the finance contract which had redacted the small amount of information which EIB wished not to disclose. The Information Commissioner thus had both the redacted and the non-redacted version of the finance contract. (This is expressly referenced in the fifth page of the decision). By the simple exercise of comparing and contrasting the two versions, it would have been possible for the Information Commissioner to identify precisely the information in respect of which disclosure was being resisted. The information which the EIB sought to have exempted from disclosure had been identified with surgical precision.

72. It is self-evident that the redacted material was commercially sensitive information. It refers to matters such as the interest rate, and details of existing borrowings and the precise nature of the financial covenants. This clearly could impact on the competitive position of UCC for the reasons which it had set out in its submission. In particular, it is to be recalled that UCC had expressly stated that disclosure of the information would compromise the University's ability to attract the EIB and other such institutions to engage with the University in the future. It was further stated as follows.

> "Disclosure of UCC's cost of capital will compromise UCC in the future were it to enter into lease agreements of its assets, Public Private Partnerships or when setting fees. Such disclosure would compromise UCC in its negotiations with other financing providers and also disclose commercially sensitive information on UCC's cost of capital for a range of projects which do not received any public funding."

73. It is also stated that disclosure of the EIB's margin applied to the UCC facility would compromise EIB's competitive position when competing for future loans with other potential customers.

74. Turning to the detail of the decision, the two principal findings were, first, in respect of the interest rate, and, secondly, on the nature of the EIB. The approach taken by the Information Commissioner to the question of the interest rate is, with respect, overly technical. It will be recalled that the impugned decision recites that the specific interest rates to be applied to each drawdown of funds and whether the rates were to be fixed or floating were not set until relevant drawdown dates. The decision then goes on to suggest that the Information Commissioner is not satisfied that release of the overall terms of the contract would reveal the specific terms applied to each tranche of funds drawdown by UCC.

75. The key point, of course, is that the margin for the floating/variable interest rate is referenced in the finance contract. Moreover, if UCC chose to drawdown all the funds on a floating/variable basis—rather than on a fixed basis—this would mean that the actual interest rate would be disclosed. Alternatively, if UCC did not opt for the variable rate, then the interest rate would become known at the time of the drawdown.

76. The fundamental error committed by the Information Commissioner is that he failed to have regard to the impact or adverse effect on UCC, as opposed to the EIB. It appears from an analysis of the impugned decision that the primary focus was on the EIB, and in circumstances where the decision-maker had formed the view that the EIB was not a retail or commercial bank, the decision-maker effectively discounted the alleged prejudice.

77. Counsel on behalf of the Information Commissioner argued that most of UCC's submission of 7 September 2017 was directed to the alleged prejudice which disclosure would cause to the EIB's competitive position. It was further argued that, if and insofar as reference was made to UCC's own position in the submission, this was merely *derivative* of the EIB's position. There is some merit in this argument. UCC's initial

position had certainly sought to focus on the impact which disclosure would have for the EIB. The position of the parties had, however, evolved over the course of the process, and by the time the Information Commissioner came to make his final decision, he had the benefit of the redacted version of the finance contract. Without wishing to belabour the point, this allowed the information in dispute to be pinpointed. Moreover, as set out at paragraph 72 above, UCC had advanced arguments in respect of the prejudice it would suffer.

78. Finally, for the sake of completeness, I should address one further argument advanced by counsel on behalf of the Information Commissioner. Counsel placed some emphasis on the fact that section 36(1)(b) refers to the competitive position of a person in the conduct of his or her profession or business or otherwise in his or her occupation. There was some suggestion that the finance contract did not relate to the *principal business* of UCC. In response, counsel for UCC submitted, first, that no reliance was placed on this issue in the impugned decision, and, secondly, that the carrying out of capital development projects for educational purposes is part of the business of a modern university, and that to this extent UCC is in the "business" of obtaining finance.

79. The submission on behalf of UCC in this regard is well made. I accept that part of the functions of a modern university include investing in capital projects for educational purposes. This is part of the "business" of a modern university in the sense in which that phrase is used under section 36(1)(b).

80. I also reject the argument on behalf of the Information Commissioner that UCC should have invoked the exemption under section 36(1)(c), i.e. information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations. Again this was not something which was relied upon in the impugned decision. In any event, subsections (b) and (c) are not necessarily mutually exclusive.

RTÉ'S SUBMISSION ON JUDICIAL REVIEW

81. For the reasons set out above, I have concluded that the Information Commissioner erred in law, and that the impugned decision should accordingly be set aside. Given these findings, it is not necessary for me to determine whether UCC's allegation that the Information Commissioner had made *additional* errors of law is well-founded. It may be helpful, however, if I offer the following observation on the procedural question of whether an allegation of unfair procedures can be pursued by way of statutory appeal, or, alternatively, necessitates the institution of judicial review proceedings.

82. This procedural question arises in the following way. As appears from the passages from the impugned decision set out above, the Information Commissioner had accessed certain information on the EIB's website. On the basis of this information, the Information Commissioner formed the view that the EIB is very different from a commercial bank.

83. UCC contend that the Information Commissioner acted in breach of fair procedures by accessing this information without affording UCC an opportunity to respond.

84. RTÉ sought to advance an argument to the effect that this complaint in relation to fair procedures should have been pursued by way of an application for judicial review. It was not, it was suggested, amenable to a statutory appeal. (It is significant that the Information Commissioner did not support this submission on the part of RTÉ.)

85. The argument was summarised as follows in RTÉ's written legal submissions (paragraphs 18 and 25)

> "[...] It is submitted that a question of fair procedures, in particular, whether or not there was a failure to put certain matters to a party to the appeal before the Information Commissioner, is not a 'point of law' such that it can be determined in an appeal under section 24 of the Act.
>
> [...]

> While the *Deely* principles, as applied in *Sheedy* and *Minch* are similar to aspects of judicial review, it is submitted that an appeal on a point of law does not involve the application of the principles of judicial review in their entirety, and does not include an alleged breach of fair procedures."

86. Counsel on behalf of RTÉ, Emily Farrell, BL, did accept, however, that there would be no practical benefit in such an approach in that all that would be required is that a second set of proceedings would have to be issued by an applicant, and then both the statutory appeal and the judicial review proceedings would come on for hearing together.

87. As I say, it is not necessary for me to reach a finding in relation to this issue. Suffice to say that I would have required some persuasion that judicial review proceedings should have to be instituted *in addition* to a statutory appeal under section 42. For reasons similar to those set out by the Court of Appeal in *ENET*, I think that a statutory appeal is broader than judicial review.

CONCLUSION

88. For the reasons set out above, I am satisfied that the Information Commissioner's decision exhibits a number of errors of law, and that these errors are material. In particular, the impugned decision (i) mistakenly takes as its starting point a *presumption* in favour of disclosure, which required UCC *to justify* the refusal of access, and (ii) misinterprets and/or misapplies the threshold for the "competitive prejudice" exemption under section 36(1)(b) of the FOI Act 2014.

89. The fact that the Information Commissioner concluded—erroneously—that the records did not fall within section 36(1)(b) meant that the separate question under section 36(3) of whether the public interest was in favour of disclosure was not considered. (The public interest test had only been applied in respect of the third party information). I propose, therefore, to remit the matter to the Information Commissioner to reconsider and to decide in light of the findings set out in this judgment.

90. Finally, I would like to express my gratitude to counsel on all sides for their assistance with the difficult legal issues arising in this case. Their submissions (written and oral) were very helpful. I am also grateful to counsel for bringing the judgment of the Court of Appeal in *Minister for Communications Energy and Natural Resources v. Information Commissioner* [2019] IECA 68—which was handed down after the hearing before me had concluded—to my attention.

APPROVED

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